



U.S. Department of Justice

*United States Attorney
Eastern District of New York*

DMB:RMT
F.#2009R01959

271 Cadman Plaza East
Brooklyn, New York 11201

March 7, 2012

BY ECF and Hand Delivery

The Honorable I. Leo Glasser
United States District Court
Eastern District of New York
225 Cadman Plaza East
Brooklyn, New York 11201

Re: United States v. Sedgewick Smalls
Criminal Docket No. 09-728 (ILG)

Dear Judge Glasser:

The government respectfully submits this letter in advance of the upcoming guilty plea and sentencing in the above-referenced violation of probation proceedings, which are scheduled for March 12, 2012. For the reasons set forth below, the government respectfully requests that the Court impose a term of imprisonment at the high end of the 30-to-37-month Guidelines range that was in effect at the time of the defendant's original sentencing on June 8, 2011.

I. Background

A. The Original Case

On August 21, 2009, New York City Police Department ("NYPD") officers observed the defendant standing near the corner of Nostrand Avenue and Foster Avenue in Brooklyn. The defendant was drinking out of a tall can wrapped in a paper bag. Recognizing the size and shape of the can to be consistent with a can of beer, the officers pulled their vehicle up to the curb in front of the McDonald's. As they did so, the defendant quickly turned and went inside the McDonald's. The officers then exited their vehicle and followed the defendant inside. Once inside the McDonald's, the officers approached the defendant and observed that he had his hand in a garbage receptacle near the entrance and was apparently attempting to pour the contents of the can into the garbage. One of the officers placed his hand on the defendant's shoulder, at which time the defendant stated, "I have a gun!" and "I am not going to resist!" The officer immediately

placed his hand on the front of the defendant's waistband, where he felt and removed a Dan Wesson .44 caliber revolver. That revolver, which was not loaded, measures 12 inches in overall length. The defendant was placed under arrest.

Later that night, the defendant was advised of and waived his Miranda rights. During the interview that followed, the defendant stated that he has a daughter and that she was seeing a young man of whom the defendant did not approve. The defendant stated that he had previously attempted to speak with the young man's father and that their discussion had escalated into a verbal dispute. Following that dispute, the defendant decided to return home to pick up a .44 magnum revolver that was stored at his residence. After picking up the revolver, the defendant intended to return to the young man's house and use the revolver to threaten the young man's father. The defendant stated that on his way back to the young man's house he stopped and purchased a beer, which he was drinking when stopped by police. The defendant also confirmed that he had told officers that he had the revolver in the waistband of his pants.

On June 8, 2011, the Court sentenced the defendant to a three-year term of probation. As the Court imposed sentence, the following discussion occurred (Sentencing Tr. 9-12):

THE COURT: I don't know what it is that got you involved in a robbery about three or four years ago, why that happened.

THE DEFENDANT: I was intoxicated and hanging with the wrong person who influenced me.

THE COURT: One of the important things you have to learn in life, and I'm sure you have by now, is to pick your friends carefully. Keep away from people who are going to get you in trouble. That is the key.

THE DEFENDANT: Yes, Your Honor.

THE COURT: The history and characteristics of the defendant I think we have reviewed. The nature and circumstances of the offense we have reviewed. Mr. Smalls was drinking out of a paper bag, a can of beer as I remember it, when some police officers justified that they saw what was in that bag and what was the writing on the can. I remember it quite

well, just as I remember Mr. Smalls. If there's anything that Section 3582 of Title 18, any case that it must have in mind is this one or this equivalent. Namely, that imprisonment is not to be the panacea for rehabilitation. Why the government would ask for a sentence of imprisonment in this case is startling, in all due respect.

I understand the government's position that you have to prosecute the most serious crimes. This is completely misguided in this case, in my view. It is obvious that Mr. Smalls has turned his life around and has taken care of his family. He has given them a decent life and an honest life, and he has for sometime.

I am putting Mr. Smalls on probation for a period of three years. There is a \$100 special assessment.

. . .

There isn't very much for me to say to you. What I've been reading about the way that you've been conducting your life for the past two years, I would hope, would have you see that that's the way one should conduct oneself and not go home every night and worry about whether a cop is going to be knocking on your door to come to arrest you. Do an honest day's work and come home tired, have a drink, enjoy your kids and your wife. That's the way that people should be living.

I don't know what you were doing with the gun some years ago and how those things come about. Guns are bad. That is why the government is making such a strong argument about it. The government is very, very concerned about the amount of guns on the streets. I see it everyday. I see it with young kids who are involved with the wrong people, carrying guns, selling crack. There are kids 19 and 20 years old going to prison for five years, a mandatory minimum. That is tragic. Keep away from it. I don't think

there is anything else for me to say except I wish you good luck and I hope that you continue on the path that you are on.

THE DEFENDANT: Thank you.

THE COURT: Be a role model for your kid; the role model that you didn't have, unfortunately. You had a grandmother and grandfather -- or aunt and uncle taking care of you and both were alcoholics and drug addicts.

THE DEFENDANT: And they both passed away since I have been in the program.

THE COURT: You had nobody to look up to and serve as a role model to you. That tells you about the role that you should be playing for your children. Be a role model for them, be somebody they will be proud of and look up to and want to be like. Okay?

THE DEFENDANT: Yes, sir. Thank you.

MR. TUCKER: Thank you, Your Honor.

THE COURT: Mr. Morris, I think Mr. Smalls waived his right to appeal?

MR. MORRIS: Yes, Judge.

THE COURT: The sentence not being in excess of 41 months.

MR. MORRIS: Yes, Your Honor.

THE COURT: He waived his right to appeal?

MR. MORRIS: Yes, Your Honor. Thank you, Judge.

THE COURT: Good luck to you, Mr. Smalls. I don't want to see you again.

THE DEFENDANT: No problem, you won't.

B. The Instant Arrest

On September 15, 2011, at approximately 5:43 p.m., NYPD officers observed the defendant standing near the corner of Nostrand Avenue and Foster Avenue -- the same location where he was arrested in August 2009 -- with an open bottle of beer. As officers approached him, the defendant ignored their commands to stop and fled into a nearby store. As the officers took the defendant into custody, they observed a bulge in the defendant's waistband. Officers searched the defendant and found a Ruger .357 magnum revolver that contained spent bullet casings.

The defendant was subsequently released on bond. On October 24, 2011, he failed to appear in Kings County Supreme Court to be arraigned on his indictment and a bench warrant was issued for his arrest. On November 15, 2011, the defendant was arrested by the U.S. Marshals Service on the instant probation violation and remanded. On February 15, 2012, the defendant pleaded guilty in state court to attempted criminal possession of a weapon in the third degree, which is a Class E felony. He has not yet been sentenced in that case.

C. The Defendant's Criminal History

Prior to his arrest in August 2009, the defendant had been arrested three times. On October 13, 1993, he was arrested after he and another individual were seen driving what was later determined to be a stolen car, striking numerous vehicles and a pedestrian before fleeing the scene. The defendant, who was 17 at the time, received a sentence of five years' probation in connection with that offense of criminal possession of stolen property in the third degree.

On January 27, 2007, the defendant was arrested for illegal possession of a weapon in a motor vehicle. He received a sentence of three years' probation in connection with that offense.

On June 1, 2008, apparently while still on probation in connection with his January 2007 arrest, the defendant was arrested yet again. He subsequently pleaded guilty to robbery in the third degree and was sentenced to a six-month term of imprisonment. On that occasion, the defendant and another individual forcibly stole another person's cellular phone, watch, ring and wallet. The victim reported that the defendant held him in a headlock and pushed him to the ground, at which time the defendant and his associate began to kick and punch the victim. As a result of the attack, the victim lost two teeth from his dentures and bruised his elbow.

II. Discussion

Pursuant to Title 18, United States Code, Section 3565(b)(2), upon the defendant's guilty plea to Charge One, his term of probation must be revoked and the defendant must be resentenced under the statutory penalties applicable at the original sentencing. Although the applicable Guidelines range for this violation is 8 to 14 months, the government respectfully submits that a more significant punishment is appropriate and necessary.

As set forth above, Your Honor originally imposed a non-custodial sentence at least in part based on the defendant's representation that, thanks to his successful completion of substance abuse treatment, he no longer constituted a danger to the community or a risk of recidivism. Indeed, at the conclusion of the sentencing, the Court admonished the defendant that Your Honor did not want to see the defendant again and the defendant responded, "No problem, you won't."

In fact, the defendant was arrested just three months later in possession of a firearm and under the influence of alcohol. Such behavior demonstrates that the defendant's promise to seize the second chance that Your Honor gave him to follow the law and care for his family was nothing more than an opportunistic lie.

Under these circumstances, the government submits that the objectives of Section 3553(a) now require a substantial period of incarceration. Certainly, such a sentence will achieve the goal of specific deterrence, but even more important, a significant custodial sentence will serve to protect the public from a man who seems bent on obtaining and carrying firearms. Otherwise, the government fears that the defendant's next inevitable violation will involve more than simple possession of a firearm. Indeed, the circumstances of the defendant's June 2008 arrest -- wherein he assaulted, robbed and seriously injured another individual -- show that the defendant is no stranger to violence.

III. Conclusion

For the reasons set forth above, the government respectfully asks the Court to sentence the defendant to a term of imprisonment at the high end of the Guidelines range in effect at the time of the defendant's original sentencing of 30 to 37 months.

Respectfully submitted,

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